Chandra Sekaran a/l Ramiyah & Anor v Public Prosecutor

COURT OF APPEAL (KUALA LUMPUR) — CRIMINAL APPEALS NO B-05-24 OF 1997 AND B-05-25 OF 1997
LAMIN PCA, NH CHAN AND HAIDAR JJCA
26 APRIL 2000

Criminal Procedure *— Sentence — Principles of sentencing — Interference by an appellate court — Whether sentence manifestly excessive — Whether grounds to warrant interference with sentence*

The two appellants were originally charged for causing the death of one Shah Jehan under s 302 of the Penal Code ('the Code') read with s 34 of the Code. It was subsequently reduced to s 304 (first limb) of the Code where the appellants pleaded guilty and the appellants were sentenced to 12 years imprisonment each with the sentence to take effect from the date of arrest. The appellants appealed against their sentence.

Held, dismissing the appeal:

The power of sentencing is one which is at the discretion of the trial judge and, in order for an appeal to succeed, it must be shown that the trial judge erred in applying the correct principles of sentencing (see p 651C). On the facts, the maximum sentence for the offence for which the appellants were convicted is 20 years' imprisonment and the sentence of 12 years' imprisonment to take effect from the date of arrest on each of the appellant was not manifestly excessive. As such, there were no grounds to warrant interference with the sentence (see p 651G).

[Bahasa Malaysia summary

Kedua-dua perayu pada asalnya telah dituduh kerana meyebabkan kematian seorang bernama Shah Jehan di bawah s 302 Kanun Keseksaan ('Kanun tersebut') yang dibaca bersama dengan s 34 Kanun tersebut. Ia telah kemudiannya dikurangkan kepada s 304 (bahagian pertama) Kanun tersebut di mana perayu-perayu tersebut telah mengaku bersalah dan perayu-perayu tersebut telah dijatuhkan hukuman 12 tahun pemenjaraan setiap seorang dan hukuman tersebut hendaklah berkuatkuasa daripada tarikh penangkapan. Perayu-perayu tersebut telah merayu terhadap hukuman mereka.

Diputuskan, menolak rayuan tersebut:

Kuasa menjatuhkan hukuman merupakan suatu kuasa yang berada di bawah budibicara hakim perbicaraan dan, agar sesuatu rayuan dapat mencapai kejayaan, haruslah ditunjukkan bahawa hakim perbicaraan tersebut telah tersalah dalam memakai prinsip-prinsip hukuman yang

betul (lihat ms 651C). Berdasarkan fakta-faktanya, hukuman maksima bagi kesalahan yang mana perayu-perayu telah pun disabitkan adalah 20 tahun pemenjaraan dan hukuman 12 tahun pemenjaraan yang harus berkuatkuasa dari tarikh penangkapan ke atas setiap seorang perayu tersebut tidaklah keterlaluan. Oleh yang demikian, tidak terdapat alasan bagi mewajarkan campur-tangan dengan hukuman tersebut (lihat ms 651G).]

Notes

For cases on principles of sentencing, see 5 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 2904–2971.

Cases referred to

Bhandulananda Jayatilake v PP [1982] 1 MLJ 83 (refd)
PP v Loo Choon Fatt [1976] 2 MLJ 256 (refd)

Legislation referred to

Penal Code ss 34, 302, 304

Appeal from: Criminal Case No 45–10 of 1994 (High Court, Shah Alam)

Karpal Singh (*Karpal Singh & Co*) for the appellants in Criminal Appeal No B–05–24 of 1997.

BS Anatham (*JC Fernandez & Co*) for the appellants in Criminal Appeal No B–04–25 of 1997.

K Muniandy (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Haidar JCA (delivering judgment of the court): The two appellants, Chandra Sekaran a/l Ramiyah and Natarajan a/l Sabapathy were originally charged for causing the death of Shah Jehan, a citizen of Bangladesh, an offence under s 302 of the Penal Code read with s 34 of the Penal Code.

The trial proceeded before the learned judge at Shah Alam High Court on 17 March 1997 and after the completion of the evidence of the first witness for the prosecution, one Mohd Abdul Kader (SP1), it was adjourned to 18 March 1997 for continuation. On the day of the continued hearing, the defence proposed a reduction of the charge to s 304 (first limb) of the Penal Code to which the prosecution agreed on condition that both appellants would plead guilty to the proposed reduced charge. The learned judge then adjourned the case to 20 March 1997 for their pleas to be taken as well as for mitigation and sentence.

On 20 March 1997, the prosecution tendered an amended charge as agreed by both parties (exh P7). The amended charge was read to both appellants and both of them pleaded guilty and understood the nature and consequences of their pleas. The facts of the case, as amended, were read and explained to both appellants (exh P8). Both of them admitted the facts

as correct. After their counsel submitted the mitigation on their behalf in respect of the sentence, the learned judge imposed a sentence of 12 years' imprisonment on each of the appellant, the sentence to take effect from the date of their arrest, 8 September 1994.

The appeal to this court is in respect of the sentence only.

We do not propose to set out the facts of the case as they are set out fully in exh P8 (pp 48 and 49 of the appeal record).

The learned judge in his grounds of judgment in respect of the sentence set out three brief grounds by way of summary. We regret to note that the grounds of judgment are sketchy. Be that as it may, we are here dealing with the appeal against sentence only. In order for the appellants to persuade us to disturb the sentence imposed by the court below, the appellants will have to show us that the learned judge erred in applying the correct principles of sentencing as it has been repeatedly said that the power of sentencing is a discretion of the trial court. In considering the appeal on sentence, the best guidance can be drawn from what the Federal Court said in *Bhandulananda Jayatilake v PP* [1982] 1 MLJ 83 at p 84A–B:

> ... this court has said it again and again that it will not normally interfere with sentences, and the possibility or even the probability, that another court would have imposed a different sentence is not sufficient, per se, to warrant this court's interference.
>
> For a discretionary judgment of this kind to be reversed by this court, it must be shown to our satisfaction that the learned judge was embarking on some unauthorized or extraneous exercise of discretion.

We do appreciate that it is the duty of the counsel in mitigating for the accused in respect of sentencing to urge the court to consider the interests of the accused. Though the judge must consider the interests of the accused, he had nevertheless to consider the interests of the public as well. In other words he has 'to strike a balance, as far as possible, between the interests of the public and the interests of the accused' per Hashim Yeop Sani J (as he then was) in *PP v Loo Choon Fatt* [1976] 2 MLJ 256 at p 258B.

The maximum sentence for the offence for which the appellants were convicted is 20 years' imprisonment and in our view the sentence of 12years' imprisonment to take effect from the date of arrest on each of the appellant is not manifestly excessive. There were no grounds to warrant us to interfere with the sentence.

The appeal was dismissed and the sentence affirmed by us.

Appeal dismissed.

Reported by Chin En Tek